

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Zachary Herman	Team: Squad #12	CCRB Case #: 201901757	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 02/19/2019 3:50 AM	Location of Incident: Southwest corner of Park Avenue and East 119th Street	Precinct: 25	18 Mo. SOL 8/19/2020	EO SOL 4/5/2021	
Date/Time CV Reported Tue, 02/19/2019 12:30 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 02/26/2019 11:26 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Norman Cox	02339	945622	025 PCT
2. POM Maxwell Bindman	02335	959492	025 PCT
3. POM Lorenzo Jones	03231	936827	025 PCT
4. An officer			025 PCT
5. POM Christophe Mitchell	20399	945255	025 PCT
6. POM Frank Henenlotter	10006	961809	025 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Kelly Habekost	06667	954906	025 PCT
2. POM Karanveer Balagad	15738	957352	025 PCT
3. POM Andrew Plaza	20827	959902	025 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Maxwell Bindman	Force: Police Officer Maxwell Bindman used physical force against § 87(2)(b)	
B.POM Lorenzo Jones	Force: Police Officer Lorenzo Jones used physical force against § 87(2)(b)	
C. An officer	Force: An officer used physical force against § 87(2)(b)	
D.POM Lorenzo Jones	Abuse: Police Officer Lorenzo Jones refused to provide his name to § 87(2)(b)	
E.POM Christophe Mitchell	Abuse: Police Officer Christophe Mitchell damaged § 87(2)(b)'s property.	
F.POM Christophe Mitchell	Abuse: Police Officer Christophe Mitchell searched § 87(2)(b)	
G.POM Maxwell Bindman	Abuse: Police Officer Maxwell Bindman searched § 87(2)(b)	
H. An officer	Force: An officer used physical force against § 87(2)(b)	
I.POM Frank Henenlotter	Discourtesy: Police Officer Frank Henenlotter spoke discourteously to § 87(2)(b)	
J.POM Frank Henenlotter	Discourtesy: Police Officer Frank Henenlotter spoke discourteously to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
K.POM Frank Henenlotter	Discourtesy: Police Officer Frank Henenlotter spoke discourteously to § 87(2)(b)	
L.POM Christophe Mitchell	Abuse: Police Officer Christophe Mitchell seized § 87(2)(b)'s property.	
§ 87(2)(g), § 87(4-b)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

On February 19, 2019, this complaint was generated by NYPD IAB after an internal review of video footage, generating original log #2019-6802. On February 26, 2019, IAB referred this case to the CCRB.

On February 19, 2019, at approximately 3:50 a.m., § 87(2)(b) engaged in an argument with his girlfriend, § 87(2)(b) in the vicinity of Park Avenue and East 119th Street in Manhattan. PO Maxwell Bindman, PO Lorenzo Jones, Sgt. Norman Cox, and PO Kelly Habekost, all of the 25th Precinct, approached § 87(2)(b) and spoke with him prior to speaking with § 87(2)(b). § 87(2)(b) ran towards the officers as they spoke with § 87(2)(b). PO Bindman and PO Jones used force to bring him to the ground (**Allegations A and B: Force**, § 87(2)(g), § 87(2)(b)). § 87(2)(b) alleged he suffered a laceration to his hand as a result of the takedown. § 87(2)(b) alleged that while he was on the ground, he thrashed his body and tensed his arms to attempt to prevent the officers from handcuffing him, and an officer he could not identify pushed his head into the ground (**Allegation C: Force**, § 87(2)(g), § 87(2)(b)). § 87(2)(b) alleged he suffered a broken nose as a result of this. As he lay on the ground in handcuffs, § 87(2)(b) asked for PO Jones' name but PO Jones did not respond to this request (**Allegation D: Abuse of Authority**, § 87(2)(g)). PO Christopher Mitchell of the 25th Precinct removed § 87(2)(b)'s backpack by cutting the straps (**Allegation E: Abuse of Authority**, § 87(2)(g), § 87(2)(b)) and searched § 87(2)(b)'s backpack (**Allegation F: Abuse of Authority**, § 87(2)(g), § 87(2)(b)). While § 87(2)(b) was on the ground, PO Bindman reached into the front pocket of § 87(2)(b)'s hooded sweatshirt and retrieved a bag from it (**Allegation G: Abuse of Authority**, § 87(2)(g), § 87(2)(b)).

After several minutes, an ambulance arrived. Officers lifted § 87(2)(b) onto a stretcher, when he was on the stretcher, he attempted to sit up. § 87(2)(b) stated that PO Bindman and PO Jones secured him to the stretcher with a sheet. Officers covered his face with a sheet and an unidentified officer punched him in the face (**Allegation H: Force**, § 87(2)(g), § 87(2)(b)). While securing § 87(2)(b) to the stretcher, PO Frank Henenlotter from the 25th Precinct stated, "Motherfucker," "Stop fucking moving," and "Holy shit" (**Allegation I: Discourtesy**, § 87(2)(g), § 87(2)(b)). **Allegation J: Discourtesy**, § 87(2)(g), § 87(2)(b). **Allegation K: Discourtesy**, § 87(2)(g), § 87(2)(b).

§ 87(2)(b) was then transported to a hospital. § 87(2)(b) who was not arrested, stated that PO Mitchell did not return his property to him (**Allegation L: Abuse of Authority**, § 87(2)(g), § 87(2)(b)).

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)).

Body-worn camera footage was obtained from Sgt. Norman Cox, PO Jones, PO Mitchell, PO Henenlotter, PO Karnaveer Balagad from the 25th Precinct, PO Andrew Plaza from the 25th Precinct. The videos are located in Board Review 01-07, and the summaries of the videos are located in Board Review 25-31.

Findings and Recommendations

Allegation (A) Force: Police Officer Maxwell Bindman used physical force against § 87(2)(b)

Allegation (B) Force: Police Officer Lorenzo Jones used physical force against § 87(2)(b)

It is undisputed that on February 19, 2019, at approximately 3:50 a.m., officers responded to a call for a dispute in the vicinity of East 118th Street and Lexington Avenue in Manhattan. Officers responded and spoke with § 87(2)(b). It is undisputed that PO Jones and PO Bindman conducted a forcible takedown of § 87(2)(b) and that § 87(2)(b) received a laceration to his head as a result of this takedown.

In his CCRB testimony, § 87(2)(b) stated that between 6:00 p.m. and 10:00 p.m. on February 19, 2019, he had consumed between three to four 24-ounce bottles of malt liquor. He also injected cocaine at some point in that time frame; he estimated he consumed \$40.00 worth of cocaine. § 87(2)(b) stated both that he did not consume any additional alcohol after 10:00 p.m. on February 19, 2019, and that he had consumed an unknown quantity of liquor after 10:00 p.m. but at least two hours prior to the incident. He had additionally consumed an unknown quantity of Xanax or Librium, both benzodiazepines, which can impair memory, cause drowsiness, and slurred speech according to § 87(2)(b). He did not know when he consumed these drugs. § 87(2)(b) stated that because of the interaction of drugs and alcohol he had consumed, he was not drunk during the incident.

Officers approached § 87(2)(b) and § 87(2)(b) outside of 100 East 118th Street in Manhattan. After they both briefly spoke with the officers, § 87(2)(b) ran across East 118th Street while § 87(2)(b) spoke with the officers. § 87(2)(b) ran back towards the officers because he observed them speaking with § 87(2)(b). As he moved towards the officers, § 87(2)(b) did not have anything in his hands. When he got close to the officers, officers threw him onto the ground by grabbing his chest and back while another officer pushed § 87(2)(b) in his lower back, causing him to fall forward. When § 87(2)(b) fell forward, he put his hands out to prevent his face from striking the ground. When § 87(2)(b) put out his hands, his right hand came into contact with the ground, and an object on the ground lacerated § 87(2)(b)'s right thumb, cutting it to the bone (BR15).

PO Bindman testified when he and his partner, PO Jones, arrived at the incident location, they observed § 87(2)(b) yelling at § 87(2)(b). PO Bindman spoke with § 87(2)(b) she stated that § 87(2)(b) had punched a wall prior to the police arriving. While PO Bindman spoke with § 87(2)(b) § 87(2)(b) walked back and forth, yelled § 87(2)(b)'s name, and flailed his arms. PO Jones stood by PO Bindman while PO Bindman spoke with § 87(2)(b). While PO Bindman and PO Jones spoke with the female, Sgt. Cox, PO Habekost, PO Balagad, and PO Plaza arrived on scene. PO Bindman decided that § 87(2)(b) had to stop moving, to control the situation, because § 87(2)(b) was continuing to flail his arms and yell. § 87(2)(b) did not come into contact with any police officers. No one instructed PO Bindman to initiate the takedown. PO Bindman, PO Habekost, and PO Jones grabbed § 87(2)(b). PO Bindman and PO Jones each took one of § 87(2)(b)'s arms. § 87(2)(b) stopped supporting his body using his own power and tensed his muscles. § 87(2)(b) fell on the ground, and the officers moved to handcuff § 87(2)(b) (BR10).

PO Jones testified that three to five minutes after the officers initially approached § 87(2)(b) they decided to call an ambulance for him. PO Jones did not recall who specifically decided to call for an ambulance. PO Jones did not call for backup, but other units responded to the scene. Officers instructed § 87(2)(b) to stop following § 87(2)(b) and to stop moving around. PO Jones told § 87(2)(b) to leave the scene. § 87(2)(b) repeatedly refused to leave, and refused to comply with any of these instructions. § 87(2)(b) bled heavily from the laceration on his hand. The officers told § 87(2)(b) if he continued to act irrationally, the officers were going to send him to the hospital. At that point, PO Jones and PO Bindman initiated a takedown of § 87(2)(b) who was swinging his arms and shuffling his feet at the time the officers took him to the ground. PO Jones did not remember what specifically he did to help take § 87(2)(b) to the ground. After he was on the ground, the officers, including PO Jones, attempted to handcuff § 87(2)(b). PO Jones did not observe § 87(2)(b) strike his head on the ground during the takedown. PO Jones did not use any hand strikes or push § 87(2)(b)'s head into the ground during or after the takedown (BR19).

Sgt. Cox testified that § 87(2)(b) appeared to be intoxicated. Sgt. Cox believed § 87(2)(b) was intoxicated because he was yelling, acting irrationally by punching walls and refusing to comply with officers' commands, and moving in a way that suggested possible intoxication. Sgt. Cox did not observe any other factors that suggested intoxication. Sgt. Cox and other officers issued instructions to § 87(2)(b) to calm down for several minutes. While they issued these instructions, Sgt. Cox instructed PO Bindman and PO Jones to request an ambulance respond to the location to assess § 87(2)(b) due to his bleeding facial injury and behavior. After being on scene for approximately five minutes, Sgt. Cox decided to attempt to grab § 87(2)(b) so that when emergency medical services personnel arrived, they would be able to quickly assess him. Sgt. Cox was standing near PO Jones and PO Bindman. § 87(2)(b) walked by Sgt. Cox. Sgt. Cox attempted to grab the right arm of § 87(2)(b)'s coat. § 87(2)(b) swung away from Sgt. Cox, striking PO Jones in the chest with his left elbow. PO Jones and § 87(2)(b) fell to the ground, § 87(2)(b) fell on top of PO Jones. Sgt. Cox, PO Bindman, and PO Habekost moved to remove § 87(2)(b) from PO Jones. They pulled on § 87(2)(b) to pull him off of PO Jones. Sgt. Cox recalled pulling on § 87(2)(b)'s arm. After they removed § 87(2)(b) from PO Jones, the officers attempted to handcuff § 87(2)(b). § 87(2)(b) was lying on the ground with his hands under his body. Sgt. Cox and other officers issued multiple commands to § 87(2)(b) to give them his hands. § 87(2)(b) tensed his arm muscles and attempted to hold his hands under his body. Officers pulled on § 87(2)(b)'s arms to attempt to remove them from under his body. Sgt. Cox did not recall if any officer used any hand strikes on § 87(2)(b) at this time. Sgt. Cox did not himself use any hand strikes. After 30 seconds to one minute, the officers managed to pull § 87(2)(b)'s arms from under his body and secure him in handcuffs. Sgt. Cox stated two sets of handcuffs were used to cuff § 87(2)(b). he did not recall whose handcuffs were used (BR11).

A Threat, Resistance, and Injury report (TRI report) prepared regarding the use of force noted that officers took § 87(2)(b) to the ground. The TRI also noted that § 87(2)(b) suffered a laceration to his forehead as a result of the officers' takedown (BR18).

Medical records have not been received from Harlem Hospital. Follow-up attempts to contact the hospital regarding the production of the documents did not yield medical documentation.

Body-worn camera footage does not capture the takedown (BR01-BR07; BR25-31).

The investigations' attempts to locate and interview § 87(2)(b) were not successful.

§ 87(2)(b), § 87(2)(g)

NYPD Patrol Guide Procedure 221-02 states that members of service will use only the reasonable force necessary to gain control or custody of a subject. It states that in determining whether the use of force is reasonable, members of service should consider the following factors: the nature and severity of the crime/circumstances; the actions taken by the subject; the duration of the action; the immediacy of the perceived threat or harm; whether the subject is actively resisting custody; whether the subject is attempting to evade arrest by flight; the number of subjects compared to the number of MOS; the size, age, and condition of the subject in comparison to the MOS; a subject's violent history if known; the presence of a hostile crowd or agitators; and whether the subject is apparently under the influence of a stimulant or narcotic which would affect pain tolerance or increase the likelihood of violence (BR02).

§ 87(2)(b), § 87(2)(g)

Allegation (C) Force: An officer used physical force against § 87(2)(b)

§ 87(2)(b) stated he was angry, and that he was resisting officers' attempts to handcuff him after he was taken to the ground. He was not able to clarify how he was resisting. As soon as officers put § 87(2)(b) onto the ground, multiple police officers were crouched over § 87(2)(b) attempting to place him in handcuffs. § 87(2)(b) struggled with officers, pulling his arms away from the officers and twisting his body to attempt to prevent the officers from handcuffing him. He also attempted to stand up multiple times. § 87(2)(b) attempted to stand up again by pushing his arms against the ground. An officer then pushed the back of § 87(2)(b) head onto the ground, causing § 87(2)(b) to strike his face against the ground. The force of this contact ripped § 87(2)(b)'s left eyebrow, abraded the left side of § 87(2)(b)'s face and caused his nose to break (BR15).

PO Henenlotter did not recall if he used any force against § 87(2)(b) while § 87(2)(b) was on the ground (BR14).

PO Bindman did not use any hand strikes at this time. PO Bindman stated he did not punch § 87(2)(b) in the back of the head. PO Bindman did not observe any other officer use any hand strikes at this time (BR10).

PO Jones did not observe § 87(2)(b) strike his head on the ground during the takedown. PO Jones did not use any hand strikes or push § 87(2)(b)'s head into the ground during or after the takedown. PO Jones did not know if § 87(2)(b) struck his face or suffered additional injuries after the takedown. § 87(2)(b) attempted to stand up multiple times. The officers successfully handcuffed § 87(2)(b) after a few minutes. PO Jones did not recall which officer handcuffed § 87(2)(b) (BR19).

Body-worn camera footage from the officers on scene does not depict this event occurring because all of the officers' body-worn cameras were activated after § 87(2)(b) was brought to the ground and after this alleged use of force occurred (BR02-BR07). While § 87(2)(b) was being held on the ground, PO Jones' body-worn camera footage does depict him attempting to stand up multiple times, at 4:46 minutes and at 5:56 minutes. Officers push on § 87(2)(b)'s shoulders and issue him commands to sit down (BR02, BR28).

Per the section of the Patrol Guide 221-02, officers must consider multiple factors when using force, and their use of force must be reasonable (BR17).

This event is not captured in body-worn camera footage. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b).

Allegation (D) Abuse of Authority: Police Officer Lorenzo Jones refused to provide their name to § 87(2)(b)

In PO Jones' body-worn camera footage, at 00:36 minutes, § 87(2)(b) who is identifiable by his voice at this time stamp in the video, states, "What's your name? What's your name please?" (BR02).

In his testimony to the CCRB, PO Jones stated that he did not specifically recall that § 87(2)(b) made a request for the name of any officer on scene. PO Jones stated he did not refuse to provide his name to § 87(2)(b). PO Jones was shown video from board review 19 in the digital case file, which is his body-worn camera footage. PO Jones was shown from 00:34 to 00:46 minutes. In this video, § 87(2)(b) looks at the camera, and states, "What's your name, what's your name please?" After reviewing the footage twice, PO Jones acknowledged that § 87(2)(b) made this request. PO Jones stated he did not understand this request to be specifically addressed to himself (BR19).

NYPD Patrol Guide Procedure 203-09 states that officers are to courteously state their rank, name, shield number, and command, or otherwise provide them, to anyone who requests they do so (BR20).

PO Jones stated he did not provide his name to § 87(2)(b) when § 87(2)(b) requested it because he did not recognize § 87(2)(b)'s request as being directly addressed to him. However, PO Jones'

body-worn camera footage shows that § 87(2)(b) requested his name two times, and was looking directly at him when the request was made. § 87(2)(b), § 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Christophe Mitchell damaged § 87(2)(b)'s property.

Allegation (F) Abuse of Authority: Police Officer Christophe Mitchell searched § 87(2)(b)'s backpack.

§ 87(2)(b) testified when he was laying on the ground, an officer cut the straps of his backpack, which was on his back, and removed the backpack from § 87(2)(b). § 87(2)(b) did not specifically recall when this occurred (BR15).

PO Mitchell's body-worn camera footage portrays him cutting the straps of § 87(2)(b)'s backpack with a knife at 02:53. § 87(2)(b) was in handcuffs. § 87(2)(b) at 2:54 minutes says, "Rip it." PO Jones' body-worn camera footage portrays PO Mitchell cutting the straps of § 87(2)(b)'s backpack with a knife at 02:57 minutes. At 04:28, PO Mitchell looks inside § 87(2)(b)'s backpack (BR03, BR29). Sgt. Cox's video footage also depicts a portion of this search, PO Mitchell opens each compartment of the bag and rummages for items (BR01, BR28).

PO Mitchell testified that due to § 87(2)(b)'s behavior, and the fact that the job call had converted to an emotionally disturbed person call, PO Mitchell believed that § 87(2)(b)'s backpack should be removed for officer safety, as well as to ensure § 87(2)(b)'s own safety. Nobody instructed PO Mitchell to remove or look into the backpack. PO Mitchell stated that in situations with a person who is acting emotionally disturbed, it is important to secure property away from the person to ensure that the property does not contain weapons or other items that could be used to hurt anyone. PO Mitchell did not state he had a particularized belief that § 87(2)(b) possessed a weapon. PO Mitchell also did not think it would be safe to uncuff § 87(2)(b) to take the backpack off, so PO Mitchell cut the backpack off with a knife. PO Mitchell then looked into the backpack because he believed it may have contained a weapon. PO Mitchell found several loose syringes and a plastic bag. He did not find weapons or drugs. PO Mitchell did not state whether he was looking for drugs during his search of the bag. The needles in the bag were unused. After emergency medical services (EMS) personnel arrived, PO Mitchell gave the bag to an EMS responder to take to the hospital with § 87(2)(b) (BR12).

NYPD Patrol Guide Procedure 221-13 section 39 states that uniformed members of service are to remove property that is dangerous to life or will facilitate escape (BR21).

NYPD Patrol Guide Procedures 203-03 and 203-05 discuss search guidelines after arrests. 203-03 states that immediately upon arresting an individual, officers must conduct a frisk/search of the arrestee and the arrestee's immediate vicinity. Procedure 203-05 specifies that a frisk, performed primarily to ensure the personal safety of the arresting officer, is a methodical external body examination of the arrested person conducted immediately after apprehension to find weapons, evidence, or contraband. The frisk should be conducted before or immediately after the subject is rear handcuffed, depending upon particular circumstances, temperament of the subject, and escape potential (BR33, BR34).

PO Mitchell stated he removed § 87(2)(b)'s bag to search it to determine if it contained items that were dangerous. § 87(2)(b), § 87(2)(g)

PO Mitchell stated he searched § 87(2)(b)'s bag to determine if § 87(2)(b) had any weapons or dangerous items in the bag. § 87(2)(b), § 87(2)(g)

Allegation (G) Abuse of Authority: Police Officer Maxwell Bindman searched § 87(2)(b)

PO Jones' body-worn camera captures an officer at 6:41 minutes into the recording grabbing a bunched plastic bag roughly the size of a fist protruding from § 87(2)(b)'s front hoodie pocket and throws it on the ground (BR03). PO Bindman's body-worn camera shows him leaning over § 87(2)(b) at 4:18 minutes with his flashlight pointed at the ground. His hand is not visible. After PO Bindman leans over, the bag is withdrawn (BR05).

PO Jones testified that he did not know which officer did this. PO Jones denied searching § 87(2)(b). Upon reviewing his body-worn camera footage, PO Jones did not recall who had searched § 87(2)(b) but stated that a search would have been permissible under the circumstances. PO Jones stated that a search to ensure officer safety was procedural. He did not specify where such a search would have been permissible (BR19).

PO Bindman did not recall if any officer searched § 87(2)(b). PO Bindman did not recall searching § 87(2)(b) (BR10).

Per the Patrol Guide procedures cited in the previous section, officers are to remove property that is dangerous from civilians, and to conduct frisks of persons who are rear-cuffed and under arrest (BR21, BR33, BR34).

PO Bindman did not recall searching § 87(2)(b) § 87(2)(b), § 87(2)(g)

Allegation (H) Force: An officer used physical force against § 87(2)(b)

§ 87(2)(b) stated that when an ambulance arrived, two officers placed him on a stretcher. § 87(2)(b) was lying face up, with his hands handcuffed behind his back; he was not otherwise secured to the stretcher. After he was placed on the stretcher, § 87(2)(b) attempted to sit up. Officers placed a sheet over § 87(2)(b) as he attempted to sit up. Immediately after the sheet was over him, one of the officers punched § 87(2)(b) in face, with his fist striking § 87(2)(b)'s forehead. § 87(2)(b) described the officer who punched him as a white male in uniform, five feet seven inches to five feet eight inches in height, bald, with an average build (BR15).

Body-worn camera footage from PO Henenlotter and PO Jones depicts these officers lifting § 87(2)(b) from the ground onto a stretcher. § 87(2)(b) is moving his body, attempting to lift himself and twist while on the stretcher. The officers and an emergency medical technician (EMT) secure § 87(2)(b) to the stretcher using straps. After § 87(2)(b) is secured to the stretcher, an EMT wheels the stretcher over to the ambulance. The footage does not depict any officer striking § 87(2)(b). A restraint sheet is not pulled over § 87(2)(b)'s head. PO Mitchell's body-worn camera footage captures the entire escort process (BR02, BR03, BR05, BR28, BR29, BR30).

PO Henenlotter testified in order to secure § 87(2)(b) to the stretcher, EMTs and officer used three belts. One belt went around § 87(2)(b)'s lower legs, one around his torso, and one around his upper chest. As § 87(2)(b) kicked his legs, PO Henenlotter grabbed one of § 87(2)(b)'s legs. He attempted to secure a belt around § 87(2)(b)'s legs. Eventually, PO Henenlotter, the EMTs, and other officers successfully secured § 87(2)(b) to the stretcher. PO Henenlotter did not strike § 87(2)(b) (BR14).

PO Bindman testified that he, PO Jones, and PO Henenlotter secured § 87(2)(b) to the stretcher. PO Bindman walked with the EMTs to the ambulance, he did not believe anyone else went with them. PO Bindman did not punch § 87(2)(b) in the face at this time. PO Bindman did not observe any other officer punch § 87(2)(b) in the face (BR10).

§ 87(2)(b), § 87(2)(g)

Allegation (I) Discourtesy: Police Officer Frank Henenlotter spoke discourteously to § 87(2)(b)

Allegation (K) Discourtesy: Police Officer Frank Henenlotter spoke discourteously to § 87(2)(b)

PO Henenlotter's body-worn camera footage depicts PO Henenlotter assisting EMS personnel in securing § 87(2)(b) to a rolling stretcher. § 87(2)(b) moves his body and legs. PO Henenlotter attempts to secure § 87(2)(b)'s legs. At 10:16 minutes, a voice says, "Motherfucker." At 10:20 minutes, the voice says, "Stop fucking moving." At 10:22 minutes, the voice says, "Holy shit." (BR02, BR30).

PO Henenlotter testified that approximately ten minutes after PO Henenlotter arrived on scene, EMS arrived. He stated that there were probably two emergency medical technicians (EMTs) on

scene. He did not recall what hospital they were from. He stated it was possible that one of the EMTs was female. When EMS arrived, PO Henenlotter, other officers, and the EMTs attempted to get § 87(2)(b) onto the stretcher. § 87(2)(b) was kicking with his legs. Other than kicking his legs, PO Henenlotter did not recall if § 87(2)(b) was doing anything else with his body. While attempting to secure § 87(2)(b) to the stretcher, PO Henenlotter stated that an officer might have said, “Motherfucker,” and, “Stop fucking moving,” to § 87(2)(b). He did not recall if he said that. PO Henenlotter was shown video from Board Review 14, which is his body-worn camera. It is in color and has audio. Shown from 09:59 minutes. During the video, an individual says, “Motherfucker.” Seconds later, that individual says, “Stop fucking moving.” After that, the individual says, “Holy shit.” PO Henenlotter stated he was the individual who said, “Stop fucking moving.” He made that statement to attempt to cause § 87(2)(b) to stop moving. The video was played again from 10:15 minutes. He identified himself as the individual who said, “Holy shit.” PO Henenlotter did not state why he made this statement (BR14).

PO Henenlotter identified himself as the speaker of the statement, “Stop fucking moving.” PO Henenlotter’s self-identification as the speaker of that statement, the fact that the video depicts that the speaker of these phrases is the same, and his acknowledgement that that an officer might have said, “Motherfucker,” lead the investigation to determine that he is the speaker of the phrase “Motherfucker.”

According to NYPD Patrol Guide Procedure 200-02, police officers are to be courteous and respectful in their interactions with the public (BR35).

Disciplinary Case 2004-79627 states “The question of whether the use of profanity by a member of service during a street confrontation with a civilian constitutes misconduct has been the subject of a number of Departmental disciplinary decisions. These decisions have consistently concluded that when an officer uses an otherwise impolite word during a stressful street encounter where the officer is attempting to maintain control of the situation, the police officer’s verbal slip does not rise to the level of actionable misconduct.” In the case, the term, “Verbal slip” is used to discuss the statement: “Get the fuck out of here.” Therefore, the verbal slip is made within a lawful order, e.g., an instruction to leave. Crucially, the verbal slip that this case determined not to be discourteous was not an excited utterance, or made outside of the context of a lawful order (BR36).

Disciplinary Case 2013-10143 states that although officers are to be courteous and respectful, profane remarks made by members of service may be permissible in the context of a dangerous situation, or when added as an intensifier added to a lawful command in the context of a dangerous situation (BR26).

The Patrol Guide directs officers to be courteous and respectful in their interactions with the public. Disciplinary Case Law articulates circumstances where an officer’s use of discourteous language may be permissible. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

PO Henenlotter identified himself as the speaker of the statement, “Holy shit.” PO Henenlotter did not provide a basis for making this utterance. The statement, “Holy shit,” is discourteous and does

not serve a valid law-enforcement function. § 87(2)(g)

Allegation (J) Discourtesy: Police Officer Frank Henenlotter spoke discourteously to § 87(2)(b)

As stated above, PO Henenlotter identified himself as the speaker of the statement, “Stop fucking moving.” (BR14).

Patrol Guide Procedure 200-02 directs officers to be courteous to the public (BR35).

As stated above, per Disciplinary Case 2013-10143 and Disciplinary Case 2004-79627, some discourteous statements may be permissible (BR26).

PO Henenlotter identified himself as the speaker of the statement, “Stop fucking moving.” PO Henenlotter made this statement in an attempt to cause § 87(2)(b) to stop moving. § 87(2)(b) exhibited resistance and non-compliance with officer’s commands while he was on the stretcher, and acknowledged doing so. § 87(2)(g)

Allegation (L) Abuse of Authority: Police Officer Christophe Mitchell seized § 87(2)(b) s property.

§ 87(2)(b) alleged that after PO Mitchell seized his backpack, he never received his property back from PO Mitchell or the hospital. § 87(2)(b) did not state in his testimony when he last observed his backpack (BR15).

PO Mitchell stated that he placed § 87(2)(b) s backpack in the ambulance after he removed it. PO Mitchell did not state what he did with the needles that he recovered. (BR10).

Body-worn camera footage does not confirm or refute Officer Mitchell’s assertion that § 87(2)(b) s backpack was placed in the ambulance when he was removed from the location (BR01-BR07).

As stated above, medical records were not received in this case and therefore cannot be reviewed.

No property vouchers were generated regarding this case.

Testimonial evidence is not dispositive regarding the ultimate location of § 87(2)(b) s backpack at the incident location. § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- § 87(2)(b)
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- PO Jones has been a member of service for 15 years and has been the subject of five CCRB complaints and six allegations, of which two were substantiated.
 - 200710853 involved a substantiated allegation of physical force against PO Jones. The Board recommended charges and the NYPD did not impose discipline due to the statute of limitations.
 - 201108849 involved a substantiated allegation of discourteous language against PO Jones. The Board recommended charges and the NYPD imposed instructions.
 - § 87(2)(g) [REDACTED]

§ 87(2)(g)

- § 87(2)(g)

- § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b)
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED] (BR10).

Squad No.: 12

Investigator: Zachary Herman Investigator Zachary Herman 06/02/2020
Signature Print Title & Name Date

Squad Leader: Carlmais Johnson IM Carlmais Johnson June 4, 2020
Signature Print Title & Name Date

Reviewer: _____

Signature	Print Title & Name	Date
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